

STATE OF CALIFORNIA

DEPARTMENT OF FOOD AND AGRICULTURE

MARKETING BRANCH



CALIFORNIA KIWIFRUIT COMMISSION LAW

CHAPTER 6, DIVISION 22 OF THE FOOD AND AGRICULTURAL CODE

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California Kiwifruit Commission

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CALIFORNIA KIWIFRUIT COMMISSION

Article 1. Declaration and General Provisions

68001. The kiwifruit industry in this state is expanding and can constitute one of California's principal fruit crops. The industry can provide an important source of employment for many people in the state, a high proportion of whom are from underprivileged and historically deprived segments of the population.

68002. As an exotic subtropical fruit, the kiwifruit is not heavily consumed in this country or abroad. Opportunity exists for continued growth and expansion of the industry, by creating new markets in such areas. The success of such an expansion program is uniquely dependent upon effective advertising and promotion, since the creation of new markets is essentially a matter of educating people to the use of a previously unknown or unrecognized food.

68003. The establishment of a California Kiwifruit Commission is necessary for the efficient development and management of a national and international advertising program and essential to ensure that the California kiwifruit industry can compete successfully in the marketplace.

68004. The production and marketing of kiwifruit produced in this state is hereby declared to be affected with public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

68005. A commission form of administration created by this chapter is designed to deal with the broad fields of advertising, promotion, marketing research, and production research.

68006. No action taken by the commission, nor by any individual in accordance with this chapter or with rules or regulations adopted under the chapter, shall be deemed a violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act, or any rule of statutory or common law against monopolies or combinations in restraint of trade.

Article 2. Definitions

68021. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

68022. "Kiwifruit" means any variety of kiwifruit ("Kiwi," "Chinese Gooseberry," or species *Actinidia deliciosa*) produced in the state, including any kiwifruit delivered to a processor for processing into any kiwifruit product.

68023. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to the provisions of this chapter.

68025. "Commission" means the California Kiwifruit Commission.

68026. "Commissioner" means any member of the commission.

68027. "Distribute" means to engage in the business of a distributor.

68028. "Distributor" means any person who engages in the operation of selling, marketing, or distributing kiwifruit which he has produced or purchased or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. When the distributor is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments of which a corporate distributor may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, kiwifruit which was not previously subject to assessment by the commission.

68029. "Secretary" means the Secretary of Food and Agriculture.

68030. "Districts" shall consist of the following:

- (a) District 1 consists of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Mendocino, Glenn, Butte, and Plumas Counties.
- (b) District 2 consists of Lake, Colusa, Sutter, Yolo, Napa, Sonoma, Marin, and Solano Counties.
- (c) District 3 consists of Sierra, Yuba, Nevada, Placer, El Dorado, Alpine, Amador, and Sacramento Counties.
- (d) District 4 consists of Contra Costa, Alameda, Santa Clara, Santa Cruz, San Benito, San Francisco, San Mateo, and Monterey Counties.
- (e) District 5 consists of San Joaquin, Calaveras, Tuolumne, Mono, Mariposa, Stanislaus, and Merced Counties.
- (f) District 6 consists of Madera, Fresno, Kings, Tulare, Inyo, and Kern Counties.
- (g) District 7 consists of San Luis Obispo, Santa Barbara, and Ventura Counties.
- (h) District 8 consists of San Bernardino, Riverside, Orange, Los Angeles, San Diego, and Imperial Counties.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the secretary, when necessary to maintain similar total production among the districts, and to insure proper representation by producers. These boundaries need not coincide with county lines.

Pursuant to this section, the Commission amended district boundaries in 1994 and further amended districts in 1995. The districts as amended consist of the following:

- District 1 - Consists of Amador, Butte (excluding Gridley), Colusa, El Dorado, Glenn, Lake, Nevada, Placer, Sacramento, Shasta, Solano, Sonoma, Tehama, and Yolo Counties.
- District 2 - Consist of Gridley (Zip Code 95948)
- District 3 - Consists of Sutter and Yuba Counties
- District 4 - Consists of Fresno, Madera, Merced, Monterey, San Joaquin, San Mateo, Santa Clara, Santa Cruz and Stanislaus Counties
- District 5 - Consists of Tulare (North of Highway 198) and Kings Counties
- District 6 - Consists of *Inyo [added in 1995]* and Tulare (South of Highway 198 to Avenue 56 excluding the West Side of Highway 65 between Highway 137 and Avenue 56) Counties.
- District 7 - Consists of Tulare County (West of Highway 65 between Highway 137 and Avenue 56)
- District 8 - Consists of *Imperial, Kern, Los Angeles, Orange, Riverside [added in 1995]*, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare (South of Avenue 56) and Ventura Counties.

68031. "Ex officio member" shall be a nonvoting member of the commission.

68032. "Handle" means to engage in the business of a handler as defined in Section 68033.

68033. "Handler" means any person engaged, within this state, as a distributor in the business of distributing kiwifruit or any person engaged as a processor in the business of processing kiwifruit and employees thereof so engaged.

68034. "Independent handler" means a handler who primarily handles fruit for an independent producer or grower.

68034.5. "Cooperative handler" means a handler who primarily handles fruit for a cooperative producer or grower.

68036. "Marketing research" means any research relating to the sale of kiwifruit.

68037. "Marketing season" or "fiscal year" means the period beginning October 1 of any year and extending through September 30 of the following year.

68038. "Nonprofit cooperative association" or "cooperative" means any corporation which is organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20.

68039. "Processor" means any person engaged, within this state, in the operation of canning, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other manner changing the form of kiwifruit for the purpose of preparing it for market and marketing the kiwifruit, or who is engaged in any activities which are performed for the purpose of marketing processed kiwifruit. When the processor is a corporation, all of the directors and officers of the corporation in their capacity as individuals are included, and any liability for failure to collect or make payment of assessments to which a corporate processor may be subject pursuant to this chapter includes the same liability for each individual director or officer of the corporation.

The term "processor" does not, however, include a person who is engaged in manufacturing from kiwifruit so changed in form another and different product.

68040. "Process" means to engage in the business of a processor.

68041. "Producer" or "grower," means any person who is engaged, within this state, in the business of producing, or causing to be produced for market, kiwifruit, who shall, upon request, provide proof of commodity sale and proof of assessment payment during the preceding marketing season, or provide adequate proof, as determined by the commission, of actual or anticipated commodity sale and assessment payment during the existing marketing season.

68042. "Production research" means any research related to the production, harvest, and post harvest handling of kiwifruit, other than marketing research.

68043. "Sale" means the point at which the producer transfers title to the kiwifruit in exchange for financial compensation or other valuable consideration. A sale may occur even though the kiwifruit purchased is not placed in normal marketing channels.

68044. "Tray" means a receptacle used in the packaging or handling of kiwifruit.

Article 3. The California Kiwifruit Commission

68051. There is in the state government the California Kiwifruit Commission, a state agency operating under authority of this chapter.

The commission shall be composed of eight kiwifruit producers who are not handlers, one producer member-at-large, one handler, and one public member. Eight producers, one from each district, shall be elected by and from producers within the respective districts. The producer member-at-large shall be elected by and from producers statewide. The handler member shall be elected by and from handlers statewide.

The public member shall be appointed to the commission by the secretary from the nominees recommended by the commission.

The secretary, the handler member, and other appropriate individuals as determined by the commission shall be nonvoting ex officio members of the commission.

68052. The secretary may require the commission to correct or cease any existing or proposed activity or function that is determined by the secretary to be in violation of this chapter or not to be in the public interest.

If the commission refuses or fails to cease those activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities and functions of the commission until such time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

Actions of the commission in violation of the written notice shall be without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

Upon service of the written notice, the secretary shall notify the commission, in writing, of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and the secretary may make recommendations that will make those activities or functions acceptable.

68053. The commission or secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

68054. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities under this chapter. However, the court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of responsibility for payment of the secretary's legal costs with regard to the action.

68054.5. Each member of the commission, except the ex officio members, has an alternate member, who is elected in the same manner as the member. An alternate member, in the absence of the member for whom he or she is alternate, serves in place of the member on the commission, and has, and exercises, all the rights, privileges, and powers of the member when serving on the commission. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the commission until a successor is elected and has qualified as provided in Section 68055.

68055. Any vacancy on the commission including, but not limited to, the failure of any person elected to the commission as a member or alternate member to continue in his or her position due to a change in status making the member ineligible to serve, or through death, removal, or resignation, shall be filled, for the term, by the commission by majority vote. However, that person shall fulfill all the qualifications set forth in this article as required for the office he or she is to fill. Qualifications of any person to fill a vacancy on the commission shall be certified, in writing, to the secretary. The secretary shall notify the commission if he or she determines that any such person is not qualified.

68056. Any producer member or his alternate on the commission shall be an individual or an employee representing a producer who has a financial interest in producing, or causing to be produced, kiwifruit for market. The qualifications of a producer member and an alternate producer member shall be maintained during the entire term of office.

Any handler member or his alternate shall be an individual or an employee representing a handler who has a financial interest in handling kiwifruit for market. The qualifications of a handler member and an alternate handler member shall be maintained during the entire term of office.

The public member or his alternate on the commission, shall have all the powers, rights, and privileges of any other member on the commission. The public member shall not have any financial interest in the kiwifruit industry.

68057. The term of office of all commissioners, except any ex officio member, shall be for two years from the date of their election and until their successors are qualified; provided, however, that of the first members of the commission, one-half shall serve for one year, and one-half shall serve for two years, with the determination of term of each such member to be made by lot at the time of election. The same selection procedure shall apply to the two handler members. Terms of office of each commissioner shall be limited to four consecutive terms, except that any member selected to serve a one-year term may serve one additional two-year term.

68058. The commission shall be and is hereby declared and created a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the state, and shall be prima facie evidence of the truth of all statements therein.

68061. A quorum of the commission shall be any seven voting commissioners. Except as provided in Sections 68030 and 68132, the vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

68062. The secretary or the secretary's representatives shall be notified and may attend each meeting of the commission and any committee meeting of the commission. However, the secretary shall not be entitled to attend an executive session of the commission called for the purpose of discussing potential or actual litigation against the department.

68062.5. When the secretary is required to concur in a decision of the commission, the secretary shall indicate his or her response to the commission within 15 working days from notification of the decision. The response may be a request that additional information be provided.

68063. No commissioner or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each commissioner, except ex officio government members, and each member of a committee established by the commission who is a nonmember of the commission may receive a sum of not to exceed one hundred dollars (\$100) per day, as established by the commission, for each day spent in actual attendance on, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission, as approved by the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

68064. All moneys received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission, shall be deposited in such banks as the commission may designate and shall be disbursed by order of the commission through such agent or agents as it may designate for that purpose. Any such agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business as such in the State of California, in favor of the commission, in the penal sum of not less than twenty-five thousand dollars (\$25,000).

68065. The state shall not be liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission nor shall a commissioner, alternate member, or employee of such commission be responsible individually in any way to any producer or handler or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his own individual acts of dishonesty or crime. The commission accepts full responsibility to defend any member of the commission or alternate member, or an employee or agent thereof, against any such claim, except for individual acts of dishonesty or crime. No commissioner or alternate member shall be held responsible individually for any act or omission of any member of such commission. The liability of the commissioners shall be several and not joint, and no commissioner shall be liable for the default of any other commissioner.

Article 4. Powers and Duties of the Commission

68081. The powers and duties of the commission, subject to Sections 68052 and 68053, include, but are not limited to, all of the following:

(a) To adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out this chapter, including appeals from any bylaw, rule, regulation, or order of the commission in a manner established by the commission.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with or deemed reasonably necessary for, the proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it deems necessary. The officers have the powers and duties delegated to them by the commission.

(d) To employ a person to serve, at the pleasure of the commission, as president and chief executive officer of the commission and other personnel, including legal counsel, as necessary to carry out this chapter. The commission may retain a management firm or any staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under the control of the commission. If the person engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective, and if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

(g) To establish offices and incur expense, and to enter into any and all contracts and agreements, and to create any liabilities and borrow any funds in advance of receipt of assessments that may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(h) To keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. The audit shall be made a part of an annual report to all producers and handlers of kiwifruit, copies of which shall also be submitted to the Legislature and the department. In addition, the secretary may, as he or she determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(i) To promote the sale of kiwifruit by advertising and other promotional means, including cost-sharing advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for kiwifruit and to educate and instruct the public with respect to kiwifruit and the uses and time to use the several varieties and the healthful properties and nutritional value of kiwifruit.

(j) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling kiwifruit; to arrange for the performance of dealer service work providing display and other promotional materials; to make market surveys and analyses; to present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the marketing of kiwifruit.

(k) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of kiwifruit.

(l) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from that research or elsewhere respecting cultural and production practices, marketing, and distribution of kiwifruit. In connection with the research, the commission may accept contributions of, or to match, private, state, or federal funds that may be available for those purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(m) To collect, publish, and distribute, without charge, a bulletin or other communication for dissemination of information, including, but not limited to, crop statistics, relating to the kiwifruit industry to producers and handlers.

(n) To establish an assessment rate to defray operating costs of the commission.

(o) To establish an annual budget according to acceptable accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) To submit a statement of contemplated annual activities authorized under this chapter, including advertising, promotion, marketing research, and production research, which shall be concurred in by the secretary.

(q) To administer, if requested by an advisory board, a board of directors, or any other authorized agent of a governmental program, any governmental program establishing grades and standards for the kiwifruit industry.

(r) The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(s) The commission shall provide to producers, free of charge, the names and addresses of producers on the list maintained by the commission. Handlers and other persons may obtain the names and addresses of producers on the commission's list upon reimbursement of the commission's actual costs of reproduction and delivery.

68082. (a) In order to prevent unfair trade practices, which are detrimental to California's kiwifruit industry, including, but not limited to, deception and misinformation, the commission may collect and disseminate to any and all interested persons, handler f.o.b., market price information based on sales that have occurred.

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information pursuant to this section shall be approved by the secretary.

Article 5. Implementation and Voting Procedures

68091. The secretary shall establish a list of producers eligible to vote on implementation of this chapter. In establishing this list, the secretary shall require that handlers, county agricultural commissioners, and kiwifruit producers in this state submit the names, mailing addresses, and district numbers of all kiwifruit producers who produce kiwifruit. The request for such information shall be in writing. The list shall be filed within 30 days following receipt of the written notice.

Any producer of kiwifruit whose name does not appear upon the secretary's list of producers affected may have his or her name established on that list by filing with the secretary a signed statement, identifying himself or herself as a producer. Failure to be on the list does not exempt the producer from paying assessments under this chapter.

68092. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds, in a referendum conducted by the secretary, that at least 40 percent of the total number of producers from the list established by the secretary pursuant to Section 68091, participate, and either of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum, and the producers so voting marketed a majority or more of the total quantity of kiwifruit in the preceding season by all of the producers who voted in the referendum, voted in favor of this chapter.

(b) A majority or more of the producers who voted in the referendum, and the producers so voting marketed 65 percent or more of the total quantity of kiwifruit in the preceding season by all of the producers who voted in the referendum, voted in favor of this chapter.

68093. The secretary shall establish a period in which to conduct the referendum, which shall not be less than 10 days or more than 60 days in duration, and may prescribe such additional procedure as may be necessary to conduct a referendum. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

68094. Nonreceipt of a ballot shall not invalidate such a referendum.

68095. If the secretary finds that a favorable vote has been given as provided in Section 68092, the secretary shall certify and give notice of the favorable vote to all producers and handlers whose names and addresses may be on file with the secretary.

68096. If the secretary finds that a favorable vote has not been given as provided in Section 68092, the secretary shall so certify and declare all provisions of this chapter inoperative.

68097. Upon certification of the commission, the secretary shall call meetings of producers in each district for the purpose of nominating and electing persons for appointment to the commission by the secretary. All producers on the secretary's list shall be given written notice of the election meetings at least 15 days prior to the meeting date.

68098. Subsequent to the first election of commissioners under this chapter, persons to be elected to the commission shall be selected pursuant to the nomination and election procedures established by the commission with the concurrence of the secretary.

68099. Prior to the referendum vote conducted by the secretary pursuant to Section 68092, the proponents of the commission shall deposit with the secretary the amount the secretary may deem necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

Any unused funds in carrying out Section 68092 shall be returned to the proponents of the commission who deposited the funds with the secretary.

Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out Section 68092, and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

68101. (a) The commission shall, not later than October 1 of each year, establish the assessment for the marketing year beginning October 1 and ending September 30.

(b) The combined assessment of the commission and any other state or federally authorized kiwifruit production research and market program shall not exceed 5 percent of the average f.o.b. (free on board) gross dollar value of the kiwifruit marketed by or on behalf of producers during the previous three marketing years, or twenty-five cents (\$0.25) per seven-pound tray of kiwifruit or the equivalent thereto, whichever is less. The assessment may be computed and assessed on a per tray basis if the commission determines that an assessment on that basis would be reasonably equivalent to the assessment established by the commission pursuant to subdivision (a).

(c) Expenditures for administrative purposes, as defined by the commission, within the maximum assessment shall not exceed 1½ percent of the gross dollar value of kiwifruit marketed by or on behalf of producers during that marketing year.

68101.5. Assessments shall be based on the total income or other valuable consideration received from the sale of kiwifruit, in whole or in part, by every producer subject to this article.

68102. The provisions of this chapter do not apply to kiwifruit produced only for the producer's home use or where the kiwifruit are used only for ornamental purposes; provided, however, that such producer shall file an affidavit with the commission establishing that his kiwifruit are not produced for commercial purposes. In any event, no production of kiwifruit is exempt from the assessment under this article when handled according to the provisions of this chapter.

68103. Every handler shall keep a complete and accurate record of all kiwifruit shipped by him and the name of the producer whose kiwifruit were shipped. Such records shall be in simple form and contain such information as the commission shall prescribe. Such records shall be preserved by the handler for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

68104. All proprietary information obtained by the commission or the secretary from producers or handlers is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other information that the commission requires, excluding individual handler information, may be disclosed by the commission.

68105. Assessments provided for in this article shall be upon the producer. The handler first handling the kiwifruit being assessed shall deduct such assessments from amounts paid by him to the producer and shall be a trustee of such funds until they are paid to the commission at the time and in the manner prescribed by the commission.

68106. Every handler shall be personally liable for the payment of the collected assessments, and failure of the handler to collect the assessment from any producer shall not exempt any handler from such liability.

68107. (a) Any assessment that is levied as provided for in this chapter is a personal debt of every producer so assessed. However, no producer shall be liable for assessments if the producer can prove, by evidence satisfactory to the commission, that (1) the assessments were deducted by the handler from amounts paid to the producer, or (2) that the handler failed to pay the producer for kiwifruit purchased from or marketed on behalf of the producer.

(b) Failure of a handler to collect assessments from amounts paid to the producer shall not relieve the producer of its obligation to pay the assessments.

68108. Any producer or handler who fails to file a return or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of such assessment determined to be due and, in addition, 1½ percent interest per month on the unpaid balance. The penalty and interest may be reduced or waived by the commission pursuant to procedures adopted by the commission.

Article 7. Actions and Penalties

68111. It shall be a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission, or in any way to affect the shipment and marketing of kiwifruit in order to avoid payment of assessments on the product's highest value.

(b) When engaged in the shipping of kiwifruit or in the wholesale or retail trade of kiwifruit, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received kiwifruit and the quantity so received.

(c) Secrete, destroy, or alter records required to be kept under the provisions of this chapter.

68112. The commission shall adopt procedures for the purpose of addressing any claims relating to this chapter made against the commission or any of its individual members, alternates, employees, or agents, and for the purpose of granting individuals aggrieved by its actions or determinations an informal hearing before the commission, or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

68113. The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and for the obtaining of injunctive relief or specific performance, respecting this chapter and the rules and regulations adopted under this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief. A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified by Section 485.010 is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or of inadequate remedy at law specified by Section 526 or 527 is not required.

Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding the commodity subject to this chapter until there is full compliance with and satisfaction of the judgment. Except as provided in Section 68054, upon a favorable judgment for the commission, it may receive reimbursement for any reasonable attorney's fees and other related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

68114. It is not necessary for the commission to allege or prove that an adequate remedy at law does not exist in any action brought under this chapter.

68115. This chapter shall be liberally construed. If any section, clause, or part of this chapter is for any reason held to be unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the remaining portions of this chapter or the application of this chapter to any other persons or under any other circumstance.

Article 8. Continuation, Suspension, and Termination

68131. Between October 1, 1984, and September 30, 1985, the commission shall cause a referendum to be conducted among producers in the manner prescribed in Section 68092 to determine whether the operations of this chapter shall be reapproved and continued effective. If the secretary finds that a favorable vote has been given, the secretary shall so certify and all provisions of this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the current marketing season ending September 30, 1985. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 68134. No bond or security shall be required for any such referendum.

68132. Following a favorable referendum conducted prior to September 30, 1985, a referendum shall be conducted by the commission every fifth year thereafter between October 1st and January 31st, following procedures provided by this section, unless a referendum is conducted as the result of a petition pursuant to Section 68133. In such case the referendum shall be every fifth year following the industry petitioned referendum.

68133. Upon the finding of a two-thirds vote of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter shall be suspended. However, any suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of that recommendation, or may, after a public hearing to review a petition filed with the secretary requesting suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding season, cause a referendum to be conducted among the listed producers to determine if the operation and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 or more than 60 days in duration. The secretary may prescribe any additional procedures that may be necessary to conduct a referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the referendum period. If at least 40 percent of the total number of producers from the list established by the secretary participate in the referendum, the secretary shall continue the operation of this chapter, if the secretary finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of continuation, and the producers so voting marketed a majority or more of the total quantity of kiwifruit marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) That a majority or more of the producers who voted in the referendum voted in favor of continuation, and that the producers so voting marketed 65 percent or more of the total quantity of kiwifruit marketed in the preceding season by all of the producers who voted in the referendum.

Should the referendum fail to meet the requirements of subdivision (a) or (b), the secretary shall suspend the operation of this chapter upon the expiration of the current marketing season.

68134. After the effective date of suspension of the operation of the provisions of this chapter and of the commission, the operations of the commission shall be concluded and any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of concluding and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding current marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to those persons, any such moneys remaining and any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to the University of California to fund research projects relating to kiwifruit.

68135. Upon suspension of the operation of this chapter and of the commission, the commission shall mail a copy of the notice of suspension to all producers and handlers affected by such suspension whose names and addresses are on file.

68140. All moneys remaining held by the commission after the repeal of this chapter shall be disposed of in accordance with Section 68134.

Article 9. Quality Standards

68141. The commission may recommend to the secretary the adoption of kiwifruit quality standards or engage in any other activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21). The adoption of standards or activities shall be in accordance with the procedures specified in that act unless otherwise specified in this article.

68142. Any standards or activities recommended by the commission shall not become operative until approved in the manner specified in Section 68092.

68143. Any standards or activities adopted pursuant to this article shall be implemented by the secretary at the beginning of the marketing season next succeeding the date on which they were approved by the secretary.

68144. The commission shall serve as the advisory body to the secretary on all matters pertaining to this article.